

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3883 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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DR NARENDRAKUMAR N SHARMA

Versus

STATE OF GUJARAT  
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Appearance:

MR NIKHIL CARIAL for MR BP TANNA for Petitioner  
MR SAMIR J DAVE APG for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/11/2000

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. It is a case where the petitioner is making attempt to abuse process of the court. His whole approach and endeavour is to stall the departmental inquiry which is

initiated against him. It is not in dispute that in the departmental inquiry he was found guilty of the charges levelled against him and ultimately he was dismissed from the services. That decision has been challenged by the petitioner by filing Special Civil Application No.5460 of 1989 which was came to be decided on 12.9.1991 (Coram : G.N.Ray, C.J. & C.K.Thakkar, J.). This court held that the petitioner is entitled to get the copy of report submitted by the Inquiry Officer, a copy of the confidential letter addressed by the Gujarat Public Service Commission dated 29.11.1988 and accordingly the order passed by the disciplinary authority dated 14.2.1989 was quashed and set aside. The court has given direction to the petitioner to make representation, if any against the documents aforesaid within 4 weeks from the date of the judgment. It is to be mentioned that the copy of those two documents aforesaid were furnished to the petitioner during the pendency of that Special Civil Application. This court directed the disciplinary authority to take into account the explanation / representation, if any made by the petitioner against the report of the inquiry officer as well as the recommendation of the Public Service Commission and to pass appropriate order in accordance with law after affording opportunity of hearing to the petitioner within a period of 4 weeks thereafter.

#. The petitioner instead of permitting the disciplinary authority to comply with the direction and order of this court aforesaid filed this petition and prayer made therein to direct the respondent-disciplinary authority not to proceed further with the inquiry against the petitioner. The further prayer made is for direction to the respondent-disciplinary authority not to pass any order against the petitioner. Another prayer made for direction to the respondent-authority to give the copy of the documents which are demanded by the petitioner.

#. This approach of the petitioner is wholly malafide and abuse of process of court. Earlier the order of dismissal has been set aside by this court on the ground that the petitioner was not given the report of the inquiry officer and copy of the confidential letter of the Gujarat Public Service Commission dated 29.11.1988. This was the only grievance made by the petitioner in earlier petition which was found favour with this court and court has ordered to the respondent authorities to furnish to him the copy of these two documents aforesaid which were admittedly furnished to him. This court directed the disciplinary authority to take into account the representation / explanation to be filed by the

petitioner against these two documents. Now after passing of that order, the petitioner wants to enlarge the scope of the inquiry by demanding further documents which were never demanded by him before this court nor this court has given any liberty to the petitioner for such demand. This petition is nothing but only an attempt to abuse the process of the court. The petitioner cannot be permitted to stall the final adjudication in the departmental inquiry more so when this court has given direction to the disciplinary authority to complete the inquiry within a period of four months by raising all these objections at this interlocutory stage.

#. The learned counsel for the petitioner submitted that earlier this court has stayed the proceedings of the departmental inquiry but the interim relief granted was ultimately vacated on 16.3.1993. The stay order has been vacated by the court on 16.3.93 and there is all possibility that the disciplinary authority by now would have completed the inquiry also. This has not been made known to the court by the petitioner or his learned counsel. It is the duty of the petitioner, more particularly, in the service matter to bring to the court's notice all the subsequent developments which would have taken place during the pendency of the litigation.

#. The learned counsel for the petitioner submits that the petitioner filed Letters Patent Appeal against the order of the learned Single Judge dated 16.3.1993 vacating interim relief granted earlier. But he is unable to give out details of the LPA as well as the order which has been passed therein at the interim and final stage. He should have furnished the detailed information about this matter, instead of what he states that LPA has been filed. When the counsel for the petitioner has no details with him about the Letters Patent Appeal i.e. its number and year and further whether it is pending or not, how far this piece of information which he possesses and passed can be taken to be correct and of any substance. In case in the Letters Patent Appeal any interim relief is granted naturally that would have been brought to the notice of the court. The petitioner or his learned counsel has not brought to the notice of the court all material information re. Letters Patent Appeal, which goes to show that there are all possibilities, first that the Letters Patent Appeal would not have been filed, second that if it would have been filed the Division Bench would not have protected the petitioner by grant of any interim relief and lastly

it would have been dismissed. Otherwise also filing of the LPA against the interim order has no relevance whatsoever because matter has to be finally heard and decided by the court. This petition is nothing but only an attempt to abuse the process of court and the same is wholly misconceived. It is an attempt on the part of the petitioner indirectly to render the order of the Division Bench ineffective where the court has given direction to complete the inquiry within a period of 4 months. That order of the Division Bench has not been challenged by the petitioner by filing SLP before the Hon'ble Supreme Court.

In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. It is a fit case where exemplary costs has to be imposed against the petitioner for reasons firstly he made an attempt to abuse the process of the court; second he made an attempt to render ineffective the order of the Division Bench and by filing such a frivolous and misconceived petition valuable and precious time of the court has been consumed. The petitioner is directed to pay Rs.5,000/= towards costs of this petition to the State of Gujarat.

(S.K.Keshote, J.)

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